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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 279

WHITE SWAN COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

H. C. A. HOFACKER,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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No. 279

WHITE SWAN COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

The White Swan Company prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Fourth Circuit entered on April 15, 1941, modifying and then affirming an order of the National Labor Relations Board.

Opinions Below.

The opinion of the Circuit Court of Appeals is reported in 118 F. (2d) 1002. The findings of fact, conclusions of law and order of the Board are reported in 19 N. L. R. B. 1079. The opinion of the Supreme Court of the United States on certificate issued by the Fourth Circuit Court of

Appeals is found in *N. L. R. B.* v. *White Swan Company*, 61 S. Ct. 751-752.

Jurisdiction.

The decree of the Fourth Circuit Court of Appeals was entered on April 15, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and under Section 10e of the National Labor Relations Act.

Questions Presented.

In the light of the facts, was the lower court justified in holding that the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located on a State line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a State other than that in which the business is located?

Was the lower court, in the light of the facts, justified in holding that a local business, such as a laundry, which happens to be located on a State line and is not engaged in interstate commerce except in so far as it may collect articles to be serviced and make deliveries to customers living across the State line, by reason of such collections and deliveries, deemed engaged in commerce within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6) so that an unfair labor practice on its part would be an unfair labor practice "affecting commerce" within the meaning of Subsection 7 of said Section (28 U. S. C. A. 152 (7)) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a)?

Was the lower court, in the light of the facts, justified in holding that the National Labor Relations Board had jurisdiction over the White Swan Company or that the

Fourth Circuit Court of Appeals itself had jurisdiction over the White Swan Company?

In the light of the evidence submitted, was the lower court justified in holding that there was sufficient substantial evidence to support the findings of fact relative to jurisdiction and relative to unfair labor practice?

Did the lower court fail, in view of the evidence and the facts, to distinguish between that which is National and that which is Local in interstate commerce?

Did the lower court fail, in view of the facts, to properly apply the Act with the result that in this case the Act as applied was contrary to the intent of the Act itself?

Statute Involved.

The pertinent provisions of the National Labor Relations Act are here set forth:

Section 2.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Section 10.

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any

unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

Portions of the Constitution of the United States Involved.

The pertinent provisions of the Constitution of the United States involved are here set forth:

Section 8 (3) Article 1. The Congress shall have power to regulate commerce with foreign nations and among the several states and the Indian Tribes.

Amendment to Constitution, Article 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment to Constitution, Article 10. The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively or to the people.

Statement.

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and Order.

From the Order we find that the White Swan Company is located at Wheeling, West Virginia, on the line dividing West Virginia from Ohio. It operates a laundry and dry cleaning establishment. Part of its business is derived from the transportation of garments in its trucks from customers on the Ohio side of the Ohio River to the petitioner's plant in West Virginia to be serviced. After they are serviced petitioner delivers these garments in its trucks across the Ohio River into Ohio. Approximately 12.93% of petitioner's gross income for 1938 was derived from the servicing of garments which were collected from and delivered to customers in Ohio.

The record shows that the company's service confines itself exclusively to what is known as the Wheeling Industrial District, which district may be defined as that area comprised within a radius of fifteen (15) miles of the City of Wheeling. Were this laundry located back fifteen miles from the State line the questions before us would not arise, and the only reason they are here is because petitioner's plant happens to be located on the Ohio River, which river at this point separates the State of West Virginia from the State of Ohio.

The record shows that petitioner does not purchase, sell, barter, or exchange its product. Neither does it purchase raw materials and process same, nor does it manufacture or change the form, substance, character, utility, or value of the goods it deals in. Title to the goods always remains in the individual. All that the petitioner performs is a service operation on the garments at the instance of the owner.

The record shows that a laundry cannot operate successfully beyond fifteen (15) miles from its plant, therefore, the business must always remain local in character.

The record shows that the Company has no branches or sales agencies and has but one plant and confines all of its advertising to its home town, namely the City of Wheeling, West Virginia.

The Board introduced figures in evidence as part of its proof showing purchases of laundry machinery in an attempt to sustain jurisdiction. It is difficult to understand how this could determine jurisdiction for the reason that a laundry does not process or manufacture anything, nor does it even make annual purchases of machinery.

The lower court was troubled by the question of jurisdiction in this case and on certificate requested the Supreme Court to decide two questions submitted, which the Supreme Court refused to do on the theory that the entire record at

that time was not before it. The entire record is now before the Court for decision on the merits.

The Board's Order in this case called for the petitioner to cease and desist discouraging membership in a Union and from interfering with, restraining, or coercing employees, offer re-employment and make whole three out of eleven employees and the Board dismissed the charges with reference to the other eight employes.

The Fourth Circuit Court of Appeals has now affirmed the order of the Labor Board and the case is now before the Supreme Court on certiorari requested on behalf of the White Swan Company.

Specification of Errors to be Urged.

The lower court erred in holding that the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located on a State line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a State other than that in which the business is located.

The lower court erred in holding that a local business, such as a laundry, which happens to be located on a State line and is not engaged in interstate commerce except in so far as it may collect articles to be serviced and make deliveries to customers living across the State line by reason of such collections and deliveries, is engaged in commerce within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6) so that an unfair labor practice on its part would be an unfair labor practice "affecting commerce" within the meaning of Subsection 7 of said Section (29 U. S. C. A. 152 (7) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a).

The lower court erred in holding that the National Labor Relations Board had jurisdiction over the White Swan

Company or that the Fourth Circuit Court of Appeals itself had jurisdiction over the White Swan Company.

The lower court erred in holding that there was sufficient substantial evidence to support the findings of fact relative to jurisdiction and relative to unfair labor practice.

The lower court erred in failing to distinguish between that which is National and that which is Local in interstate commerce.

The lower court erred in properly applying the Act with the result that in this case the Act as applied was contrary to the intent of the Act itself.

Reasons for Granting Writ.

1. The decision of this case is the first one in the United States wherein the National Labor Relations Board was held to have jurisdiction over a small local laundry. If the decision is allowed to stand it means that Federal power can now be exercised on any type of business no matter how small. It is a well known fact that the laundry business is purely a service business, nothing is manufactured, service only is given, and that the average laundry operates within a very small radius. Many laundries are operated by Chinamen. This new ruling that Federal jurisdiction may apply to laundries is contra to decisions with reference to laundries that appear in the past. See *Smith* v. *Jackson*, 54 S. W. 981, 103 Tenn. 673. See also *Commonwealth* v. *Pearl Laundry Company*, 105 Ky. 259, 49 S. W. 26.

In view of the fact that this is the first laundry case decided in the country and in view of the many thousands of laundries operating within the country, and further in view of the fact that this present decision conflicts with others, we believe the Supreme Court should definitely decide the question.

2. Section 8 (3), Amendment Article 9, Amendment Article 10 of the Constitution of the United States are involved

in this case because those portions of the Constitution first give Congress the power to control and regulate commerce and then specifically state that the powers therein not delegated to the United States are reserved to the States or to the people. In view of the fact that petitioner's business in this case was entirely local, we believe that to allow this decision to prevail would mean such an invasion upon the rights of the individual states that it destroys the distinction between that which is National and that which is Local in interstate commerce, all of which is contra to the Constitution. See *U. S.* v. *Dewitt,* 9 Wall. 44, 19 L. Ed. 593; *Pierce* v. *New Hampshire,* 5 How. 574, 12 L. Ed. 256; *Covington, etc., Bridge Co.* v. *Kentucky,* 154 U. S. 209; *State* v. *Louisville R. Co.,* 97 Miss. 35, 51 South 918; *Schechter Poultry Company* v. *U. S.,* 295 U. S. 495; *N. L. R. B.* v. *Jones and Laughlin Steel Corp.,* 301 U. S. 1.

3. The decision in the instant case also conflicts with the decision rendered by the National Labor Relations Board in another case of a similar nature, *In re: Protective Motor Service Company,* 21 N. L. R. B. 50. In this case the Board found that a common carrier did part of its business out of State, yet the Board in that case ruled that it was without jurisdiction itself. Likewise in the instant case, only a small portion of petitioner's business crossed the State line. Yet the Board has ruled that it has jurisdiction. We believe the Court should mold these conflicting decisions.

4. The entire question is one of vital importance to the public because it is a known fact that there are thousands of laundry and dry cleaning establishments located throughout the country employing many thousands of people. It is also a known fact that there are many laundries and service establishments and small businesses which are located on State lines and by reason of their location on State lines, a portion of their business is derived from both

sides of that State line, and it is well now that this question be settled not only for the laundry and dry cleaning business but for those many other so-called service establishments similar to laundries which are located in similar situations.

5. The instant decision also is in conflict with the provisions of the Fair Labor Standards Act of 1938, Section 13 (a) and (2). In an Interpretative Bulletin No. 6 issued by the United States Department of Labor, Wage and Hour Division, under date of June, 1941, construing the Fair Labor Standards Act of 1938, we take the liberty to quote:

> "Service establishments are usually local in character and are usually open to the general consuming public and usually render a service to private individuals for direct consumption. The service is usually purchased in small quantities for private use rather than for industrial and business purposes. Further the service is usually rendered at a retail price."
>
> "Typical examples of service establishments akin to retail establishments within the meaning of the exemption are restaurants, cafeterias, roadside diners, hotels, tourist houses, trailer camps, *home laundries,* barber shops, beauty parlors, public baths, scalp treatment establishments, masseur establishments, funeral homes, embalming establishments, crematories, *establishments engaged in cleaning, dyeing, pressing, altering, and repairing hats, clothing, and household goods for private individuals,* valet service, shoe repair shops, shoe shine parlors, dress suit rental establishments, public garages, *automobile laundries,* drive-it-yourself establishments, battery shops, parking lots, musical instrument repair shops, piano tuning establishments, radio repair shops, watch, clock, jewelry repair establishments, household refrigerator service and repair shops."

6. Construing the Wage and Hour Act laundry establishments are definitely construed not to be in interstate commerce. Yet in the decision under the National Labor Act in

the instant case the same laundries are construed in interstate commerce. This conflict of decisions under two Federal Statutes, we feel, should be molded and conformed by the court. It is also noted that when the NIRA was still in existence laundries and dry cleaning establishments were expressly exempted from the provisions of the National Codes and the NIRA recognized that the laundry and dry cleaning business was a purely local service and not engaged in interstate commerce. See U. S. Law Week Volume 1, Part 1, 1933-34, Page 518; U. S. Law Week Volume 1, Part 2, 1934, Page 845; U. S. Law Week Volume 1, Part 2, 1934, Page 847; U. S. Law Week Volume 1, Part 2, 1934, Page 851.

7. We do not believe it was the intent of the Congress in passing the Wagner Act to project it into intrastate commerce such as is here being done in the instant case. We take the liberty to quote a part of the Senate Committee Report at the time the Act was considered, May 2, 1935, Report No. 573. The following cases also are in point: *Caminetti* v. *U. S.*, 242 U. S. 470 at 490; *Holy Trinity Church* v. *U. S.*, 143 U. S. 457; *Sorrells* v. *U. S.*, 287 U. S. Reports, Page 435; *Scannon* v. *Kansas City Railroad Co.*, 41 Mo. App. 194.

Senate Committee Report No. 573, dated May 2, 1935:

> "The term 'affecting commerce' is inserted as a short cut to prevent the repetition of lengthy jurisdictional phraseology throughout the bill. The bill permits Federal Act to areas sanctioned by the Commerce Clause. The bill does not project Federal government into matters of purely intrastate concern. It applies only in matters which burden or affect or obstruct interstate commerce or which have led or tend to lead to a labor dispute which might have such effect upon interstate commerce."

9. From time immemorial the laundry business has always been considered a local business and subject only to

the jurisdiction of the States. Some of the States have already passed their own little Wagner Acts and in those States where the same have been passed the States have immediately taken jurisdiction over laundries. We are now faced in the instant case with a possibility of future conflict between the Federal Power and the State Power as to who will control and supervise laundries. We believe this is a matter of vital public importance and any decision which the Court makes is extremely vital to the public itself. As before stated this is the first attempt on the part of the Federal Government to exercise jurisdiction over the laundries which have always heretofore been governed by State Acts and the States. As proof of this we hereby quote the many decisions which already have arisen and have been decided by the different States under their local Wagner Acts in construing laundries. All of these decisions represent decisions in laundry and dry cleaning establishments.

Massachusetts.

Loyal Crown Linen Service, Inc., et al., 1939 Mass. L. R. C., Case No. U. P. 251, Jan. 11, 1939; *Wash Rite Laundry Co., et al.,* 1938, Mass. L. R. C. Case No. U. P. 121, June 20, 1938; *White Cleaners & Dyers, Inc., et al.,* 1938, Mass. L. R. C. Case No. U. P. 147, June 20, 1938; *C. & W. Dyeing & Cleaning Co., Inc., et al.,* Mass. L. R. C. Case No. U. P. 10, Feb. 10, 1938; *Abe Lainer d/b/a Lainer's Cleaners & Dyers Co., et al.,* Mass. L. R. C. Case Nos. U. P. 101, 134, 139, April 27, 1938; *Francis V. and Edwin U. Cahill d/b/a Union Laundry, et al.,* Mass. L. R. C. Case No. U. P. 93, May 23, 1938; *Naif Makol World Cleaners & Dyers Co., et al.,* Mass. L. R. C. Case No. U. P. 85, May 23, 1938; *Howes Co., et al.,* Mass. L. R. C. Case No. U. P. 281, May 22, 1939; *Sani-Wash Laundry, et al.,* Mass. L. R. C. Case No. U. P. 391, Sept. 21, 1939; *Eastern Overall Dry*

Cleaning Co., et al. (1940), Mass. L. R. C. Case No. U. P. 396, Jan. 19, 1940; *Golden Bell Cleaners, Inc.*, 1940, Mass. L. R. C. Case No. C. R. 333, April 29, 1940; *Lewando's French Dyeing and Cleansing Co.*, 1940, Mass. L. R. C. Case No. C. R. 341, May 6, 1940; *Shub, J. H., et al.*, D. B. A., *American Dry Cleaning Co.* (1940), Mass. L. R. C. Case No. C. R. 347, May 20, 1940; *Bonanno Laundry & Supply Co.* (1940), Mass. L. R. C. Case No. C. R. 403, Nov. 1940; *Capitol Laundry Co.* (1940), Mass. L. R. C. Case No. C. R. 406, Nov. 6, 1940; *Farnsworth New Method Laundry, Inc.* (1940), Mass. L. R. C Case No. C. R. 375, Aug. 13, 1940; *Hub Laundry Co.* (1940), Mass. L. R. C. Case No. C. R. 424, Dec. 12, 1940; *Morgan Laundry Service, Inc.* (1940), Mass. L. R. C. Case No. C. R. 386, Sept. 12, 1940; *United Laundries Co., et al.* (1938), Mass. L. R. C. Case No. C. R. 27, Feb. 16, 1938.

New York.

Economy Clean Towel Supply Co., Inc., et al., 1938, N. Y. S. L. R. B. Dec. No. 198, July 20, 1938; *Stapleton Service Laundry, Inc., et al.* (1938), N. Y. S. L. R. B. Dec. No. 206, Sept. 23, 1938; *Consolidated Laundry Corp., et al.*, 1937, N. Y. S. L. R. B. Dec. No. 4, Sept. 16, 1937; *Fox Square Laundry Co., Inc., et al.*, 1939, N. Y. S. L. R. B. Dec. No. 669, Sept. 21, 1939; *Hill Top Laundry, Inc., et al.* (1940), N. Y. S. L. R. B. Dec. No. 838, Case No. W. E-156, Mar. 25, 1940; *Midtown Laundry Inc., et al.* (1940), N. Y. S. L. R. B. Dec. No. 804, Case No. S. E.-4197, Feb. 8, 1940; *Premier Linen Supply & Laundry Co., Inc., et al.*, 1939, N. Y. S. L. R. B. Dec. No. 738, Nov. 22, 1939; *Prompt Family Laundry, Inc., et al.* (1940), N. Y. S. L. R. B. Dec. No. 771, Jan. 9, 1940; *Quality Laundry Service, Inc., et al.* (1937), N. Y. S. L. R. B. Dec. No. 10, Nov. 1, 1937; *Tudor Laundry Co., et al.* (1939), N. Y. S. L. R. B. Case No. S. U. 3581, July 12, 1939.

Pennsylvania.

Budget Laundry Co., et al., Pa. L. R. B. Case No. 170, April 12, 1938; *Crandall, McKenzie & Henderson, Inc., et al.*, 1939, Pa. L. R. B., Dec. No. 92, Feb. 26, 1940; *Lincoln Laundry Co., et al.*, 1939, Pa. L. R. B. Dec. 136, Jan. 16, 1940; *Wilson Laundry Co., et al.*, 1939, Pa. L. R. B. Case No. 34, Oct. 9, 1939; *Community Laundry Co., Inc., et al.*, 1937, Pa. L. R. B. Case No. 123, May 13, 1939; *East Cleaners & Dyers, Inc., et al.*, 1938, Pa. L. R. B. No. 196, Apr. 20, 1939; *Liberty Laundry, et al.* (1939), Pa. L. R. B. Case No. 70, Nov. 21, 1939.

Wisconsin.

Waukesha Palace Laundry Co., et al., Wisc., L. R. B. Case No. 406, C-24, April 30, 1938; *Badger Nu-Way Cleaners, et al.*, Wisc., L. R. B. Case No. 31; Ce2, Dec. No. 19, Sept. 23, 1939: *Laundry Workers Int. Union, et al.* (1940), W. L. R. B. Case No. 74 Ce-11 Dec. No. 47 2/23/40.

Conclusion.

The decision of the Court below represents a wide departure from the principals governing laundry and dry cleaning establishments of which there are hundreds and thousands throughout the land.

Therefore, we respectfully submit that this petition for writ of certiorari should be granted.

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July 10, 1941.